

FRIEDMAN, JAMES & BUCHSBAUM LLP

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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KATHERINE M. JOHNSTON, individually and as	23 cv-471
Personal Representative of the Estate of	:
JAMES R. JOHNSTON, deceased, and for the benefit	<u>COMPLAINT</u>
of all distributees of JAMES R. JOHNSTON, deceased,	:
 Plaintiff,	:
 -against-	:
 DONJON MARINE CO., INC. and the Tug Boat	:
MARY ALICE, its tackle, appurtenances and equipment,	:
<i>in rem</i> ,	:
 Defendants.	
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Plaintiff, KATHERINE M. JOHNSTON, individually and as personal representative of the Estate of JAMES R. JOHNSTON, deceased, and for the benefit of all distributees of JAMES R. JOHNSTON, deceased, complaining of the defendant DONJON MARINE CO., INC. and the Tug Boat MARY ALICE *in rem*, by her attorneys, FRIEDMAN, JAMES & BUCHSBAUM LLP, for her Complaint, respectfully alleges upon information and belief as follows:

Nature of Action:

1. This claim is brought pursuant to the Jones Act, 46 U.S.C. § 30104, and the general maritime law of the United States, seeking monetary damages as a result of the tragic death

of seaman JAMES R. JOHNSTON on or about April 27, 2022, while employed by defendant DONJON MARINE CO., INC. as a member of the crew of the Tug Boat MARY ALICE.

2. Plaintiff KATHERINE M. JOHNSTON, a citizen and resident of the State of Maine, is the wife of decedent JAMES R. JOHNSTON and was appointed Personal Representative of the Estate of JAMES R. JOHNSTON by the Register of Probate, Penobscot County, Maine.

Jurisdiction and Venue:

3. Venue is proper before this Court pursuant to 28 U.S.C. § 1391 in that a substantial part of the events or omissions giving rise to the claim occurred upon navigable waters within this District and plaintiff died in the City of New York, Borough of Manhattan.

Parties:

4. Upon information and belief, at all relevant times, defendant DONJON MARINE CO., INC. was and still is a corporation organized and existing pursuant to laws of the State of New Jersey and was authorized to transact business and was transacting business within the State of New York with an office and principal place of business in Hillside, New Jersey.

5. Upon information and belief, at all relevant times, defendant DONJON MARINE CO., INC. owned, chartered, manned, operated, maintained, and/or otherwise controlled the Tug Boat MARY ALICE, a United States registered, manned, self-propelled vessel engaged in marine transportation and construction on the East Coast of the United States.

6. At all times and dates hereinafter mentioned, the plaintiff's decedent JAMES R. JOHNSTON was a seaman and member of the crew of the Tug Boat MARY ALICE and an employee of defendant DONJON MARINE CO., INC.

FIRST COUNT

7. On or about April 27, 2022, without any fault on the part of plaintiff's decedent JAMES R. JOHNSTON, and wholly and solely by reason of the negligence, recklessness and carelessness of defendant DONJON MARINE CO., INC. and its servants, agents, contractors and/or employees, and by reason of the unseaworthiness of the Tug Boat MARY ALICE, plaintiff's decedent JAMES R. JOHNSTON became ill and was caused to sustain serious illness, fear of impending death, conscious pain and suffering, and death as a result of the failure of the defendant and crew of the of the Tug Boat MARY ALICE to provide prompt and adequate treatment, failure of the Tug Boat MARY ALICE to have appropriate COVID-19 testing kits and equipment, lack of a defibrillator, and other appropriate protocols and equipment on board said vessel, thereafter causing the serious illness and subsequent death of plaintiff's decedent JAMES R. JOHNSTON due to COVID-19.

8. The injuries, illness and subsequent death of plaintiff's decedent JAMES R. JOHNSTON were caused by the negligence and/or unseaworthiness within the privy and knowledge of defendant DONJON MARINE CO., INC. and/or its employees and agents who, among other things, failed to ensure the seaworthiness and adequacy of the Tug Boat MARY ALICE and its equipment, appurtenances and COVID-19 protocols for the task it/they undertook to perform at the commencement of the voyage and thereafter.

9. As a result of the circumstances set forth above, plaintiff's decedent JAMES R. JOHNSTON was caused to sustain excruciating conscious pain and suffering and fear of impending death, was caused to be evacuated from the vessel by ambulance, his family was caused to sustain pecuniary and other losses including, but not limited to, the loss of financial support, and

loss of the value of the services of the decedent, loss of nurturing guidance of the decedent, loss of decedent's continued accumulation of an inheritable estate for which the plaintiff seeks recovery of damages herein individually and for the benefit of the decedent's family and distributees.

10. By reason of the foregoing, plaintiff has been damaged in the sum of FIVE MILLION (\$5,000,000.00) DOLLARS.

SECOND COUNT

11. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 10 as if set forth fully at length herein.

12. Plaintiff is entitled to maintenance, cure, and medical expenses in an amount found to be owed at the time of trial.

WHEREFORE, plaintiff demands judgment against defendant DONJON MARINE CO., INC. in the First Count in the sum of FIVE MILLION (\$5,000,000.00) DOLLARS, and in the Second Count in an amount found to be owed at the time of trial, together with interest and costs.

Dated: New York, New York
January 19, 2023

FRIEDMAN, JAMES & BUCHSBAUM LLP
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